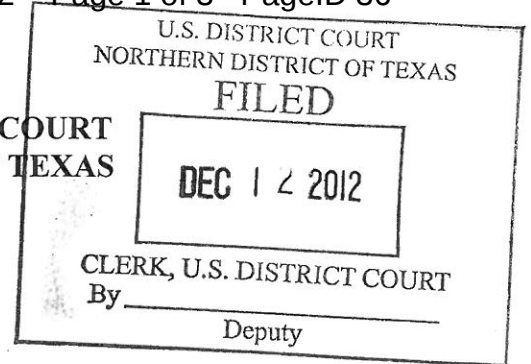


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



EUSEBIO PALACIOS, et al.,
Plaintiffs,

v.

NATIONAL HOME SAVERS CO.,
et al.,
Defendants.

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No. 3:12-CV-01763-K (BF)

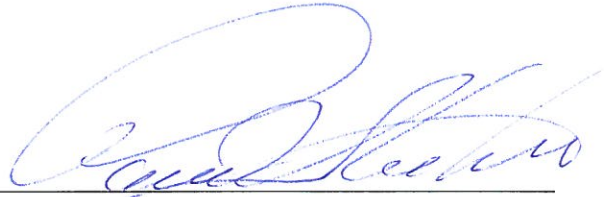
FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

This case was referred to the United States Magistrate Judge Paul D. Stickney for pretrial management. On November 6, 2012, this Court entered an Order (doc. 9) for Plaintiffs to show cause as to why they had not complied with Federal Rule of Civil Procedure 4(m), which requires proper service of defendants within 120 days after the filing of the complaint. FED. R. CIV. P. 4(m). Plaintiffs Eusebio Palacios and Julia Fernandez ("Plaintiffs") filed their Complaint against Defendants National Home Savers Co., Nicole Halstied, and Romel Carlton ("Defendants") on June 7, 2012. (Doc. 3.) Additionally, a summons was issued for each of the Defendants on July 11, 2012. (Doc. 8.) In an Order dated June 20, 2012, Plaintiffs were advised of the requirements of Rule 4(m) and were given 120 days from the date of the Order to serve Defendants. (Doc. 7.) As of the date of these Findings, more than 120 days after the June 20, 2012 Order and the filing of this lawsuit, none of the Defendants have been served.

The federal rules direct the court to dismiss any action in which service of process is not made within 120 days from the date of the filing of the complaint, unless good cause is shown. FED. R. CIV. P. 4(m). *See also Peters v. United States*, 9 F.3d 344, 345 (5th Cir. 1993) (failure of plaintiff

to serve defendant properly within 120 days of filing the complaint provides for the court's *sua sponte* dismissal of case without prejudice, after notice, unless plaintiff shows good cause for failure to obtain service). After notice was provided to Plaintiffs by this Court, Plaintiffs have failed to show good cause as to why none of the Defendants were served within the 120-day time frame. Accordingly, this Court recommends that Plaintiffs' claims against Defendants be dismissed without prejudice under Federal Rule of Civil Procedure 4(m).

SO RECOMMENDED, December 12, 2012.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on the parties. Pursuant to Title 28, United States Code, Section 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must serve and file written objections within fourteen days after service. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory, or general objections. A party's failure to file such written objections to these proposed findings, conclusions, and recommendation shall bar that party from a *de novo* determination by the District Court. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985). Additionally, any failure to file written objections to the proposed findings, conclusions, and recommendation within fourteen days after service shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).